

FEDERAL COMMUNICATIONS COMMISSION

DA 00-2068

FEDERAL COMMUNICATIONS COMMISSION

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Royston and Arcade, Georgia)

MM Docket No. 00-165  
RM-9941

**NOTICE OF PROPOSED RULE MAKING****Adopted: August 30, 2000****Released: September 8, 2000**

Comment Date: October 30, 2000

Reply Comment Date: November 14, 2000

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Southern Broadcasting of Athens, Inc. ("petitioner"), licensee of Station WPUP(FM), Royston, Georgia, requesting the reallocation of Channel 279C3 from Royston to Arcade, Georgia, as its first local aural service. Petitioner states that it will apply for the channel, if allotted.

2. Petitioner filed its request pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.<sup>1</sup> It states that the allotment of Channel 279C3 at Royston is mutually exclusive with its use at Arcade. Based on the Commission's allotment priorities, petitioner contends that the reallocation will result in a preferential arrangement of allotments since it will provide Arcade with its first local aural service while Royston (population 2,758 people) will retain local aural service from daytime-only AM Station WBIC.<sup>2</sup>

3. Petitioner states that Arcade, with a 1990 U.S. Census population of 679 people, is an incorporated community with an elected mayor and city council form of government that provides the residents with municipal services such as police protection. In addition, petitioner submits that the reallocation of Channel 279C3 to Arcade will enable Station WPUP(FM) to provide 1 mV/m service to

<sup>1</sup> See, Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

<sup>2</sup> The allotment priorities are: (1) first fulltime reception service; (2) second fulltime reception service; (3) first local service; and (4) other public interest matters. Priorities (2) and (3) are given co-equal weight. See, Revision of FM Assignment Policies and Procedures, 90 FCC 21d 88 (1982).

a total of 277,381 persons instead of its present population of 161,029 people. Further, of those presently receiving 70 dBu service from Station WPUP(FM), 117,962 people will continue to receive such service while 43,067 people will lose service. However, petitioner states that this loss of service is mitigated by the fact that the entire area will continue to be well-served by 17 AM and 17 FM stations.

As to the population which will gain service from the reallocation, petitioner notes that they also are currently well-served by 27 AM and FM stations. Furthermore, it states that Arcade is not located within an Urbanized Area and Station WPUP(FM), if licensed to Arcade, will not provide 70 dBu service to any Urbanized Area. Finally, we request that petitioner provide a loss and gain study based on the maximum theoretical omnidirectional 60 dBu (1.0 mV/m) contours from Station WPUP(FM)'s present and proposed transmitter sites. We note that the information contained in its petition is based on the present and proposed 70 dBu contours. See, Greenup, Kentucky, Athens, Ohio, 2 FCC Rcd 4319 (1987), aff'd in relevant part, 4 FCC Rcd 3843 (1989), aff'd in relevant part, 6 FCC Rcd 1493 (1991), appeal dismissed sub nom. WATH, Inc. v. FCC, D.C. Cir. No. 91-1268 (September 26, 1991).

4. Channel 279C3 can be allotted to Arcade in compliance with the Commission's minimum distance separation requirements with a site restriction of 21 kilometers (13 miles) north to avoid a short-spacing to Stations WVEE, Channel 277C, Atlanta, Georgia, WVKX, Channel 279A, Irwinton, Georgia, Station WDDK, Channel 280A, Greensboro, Georgia, and to accommodate petitioner's desired transmitter site.<sup>3</sup> In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 279C3 at Arcade.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Arcade, Georgia	--	279C3
Royston, Georgia	279C3	--

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before October 30, 2000, and reply comments on or before November 14, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington,

<sup>3</sup> The coordinates for Channel 279C3 at Arcade are 34-15-09 NL; 83-28-28 WL.

D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Gary S. Smithwick  
Smithwick & Belendiuk, P.C.  
1990 M Street, N.W., Suite 510  
Washington, D.C. 20036  
(Counsel to petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs,

or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.